

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LANCE REBERGER,

Plaintiff,

v.

MICHAEL MINEV, et al.,

Defendants.

Case No. 2:21-cv-01250-CDS-VCF

ORDER

Incarcerated Plaintiff Lance Reberger brings this action under 42 U.S.C. § 1983, alleging that prison officials violated his constitutional rights by denying him medical care for human immunodeficiency virus (HIV). Plaintiff Reberger has filed a number of motions he asserts are “emergency motions,” and Defendants have filed a motion for sanctions based on vexatious litigation. I now issue this Order resolving all pending motions.

A. Relevant Procedural History

In 2021, Judge Jennifer A. Dorsey screened Reberger’s complaint under 28 U.S.C. § 1915A and allowed his Eighth Amendment claims to proceed for the Defendants’ alleged failure to timely order his HIV medication, draw blood as ordered by a medical provider, and allow him consultation with an HIV specialist. In the same Order, she directed Defendants to respond to his many emergency motions for a preliminary injunction. Once the matter was briefed, the Magistrate Judge held a hearing and recommended that Judge Dorsey grant limited injunctive relief and order the Defendants to resume Reberger’s regular HIV-medication regimen. *See* Report and Recommendation at ECF No. 46. Reberger objected to the report and recommendation (R&R) because it did not set a specific, accelerated timeline for the resumption of that regimen. ECF Nos. 53, 54.

After objecting to the Magistrate Judge's R&R, Reberger filed two more preliminary injunctions requesting, in sum, specific medications,¹ and the Defendants moved to dismiss his complaint as frivolous.² Judge Dorsey issued an Order denying all three of the aforementioned motions because Reberger failed to establish he was entitled to the relief he requested, and the Defendants did not demonstrate that Reberger's complaint was frivolous. ECF No. 63. In that same Order, Judge Dorsey overruled Reberger's objections to the R&R, adopted and accepted the Magistrate Judge's R&R, thereby denying three additional motions for preliminary injunctions³ filed by Reberger, granting in part and denied in part two other motions for preliminary injunctions⁴, and finally denying two additional motions for preliminary injunctions.⁵ *Id.* The Order provided specific requirements for the Defendants to promptly place Reberger on a regular regimen of HIV medication. *See id.* at 4.

After Judge Dorsey issued her Order, Reberger filed three additional motions.⁶ Defendants filed a timely opposition to Reberger's pending motions docketed at ECF Nos. 62, 64, 65, 66.⁷ Defendants also filed a motion for leave to file exhibits A, B, and D, attached to ECF Nos. 67, 68, 69, and 74, under seal (*See* ECF No. 70⁸), and a motion for sanctions for vexatious litigation. ECF No. 74.⁹ On April 13, 2022, I was reassigned this case. ECF No. 75. Thereafter, the Plaintiff filed two emergency motions for preliminary injunction.¹⁰

¹ ECF Nos. 52, 61.

² ECF No. 51.

³ ECF Nos. 2, 5, 34.

⁴ ECF Nos. 43, 45.

⁵ ECF No. 52, 61.

⁶ ECF Nos. 64, 65, 66.

⁷ *See* ECF Nos. 67, 68, 69, and 73. It is the same response for each response, filed 4 separate times. For ease of resolving the pending motions, I will only cite to ECF No. 67 when addressing Defendants' opposition and Defendants' motion for sanctions for vexatious litigation.

⁸ The motion to seal (ECF No. 70) is GRANTED. I also order that the Defendants mail Reberger the letter advising him that the records are available for review upon request, as referenced in ECF No. 70 at 3, within 14 days of this order.

⁹ This motion is included in Defendants' oppositions to Plaintiff's motions filed at ECF Nos. 62, 64, 65, and 66. It was docketed separately because it seeks additional relief. Defendants are reminded to comply with LR IC 2-2(b) that requires filers to file a document for each type of relief sought. *See* LR IC 2-2(b) ("separate documents must be filed for a response to a motion and a countermotion, with the appropriate event selected for each document, rather than filing a response and a countermotion in one document").

¹⁰ ECF Nos. 84, 85.

B. Defendants' Motion for Sanctions (ECF No. 74) is Granted and Plaintiff's "Emergency Motions" (ECF Nos. 62, 65, 66, 84, and 85) are Denied

Defendants argue that Reberger's multiple filings are repetitive, frivolous, harassing, and should be considered vexatious. *See generally* ECF No. 67 at 3-4; 8-10. The motion also asks this Court to enter an order that they only need to respond to motions deemed appropriate by the Court. Reberger did not file an opposition to the motion for sanctions.¹¹

Defendants motion for sanctions highlights several issues and misleading aspects of Reberger's allegations that the HIV medicines and regimen prescribed by NDOC do not work. Reberger persists in filing motions for relief, raising the same or very similar allegations, yet at the same time, refuses to take the medication he is prescribed and to follow the recommendations of the medical providers at NDOC. In fact, Reberger's repetitive motions have been filed even after both District Court Judge Jennifer Dorsey and Magistrate Judge Cam Ferenbach have addressed the *same* or *very similar* concerns already raised by Reberger. I nonetheless reviewed and considered Reberger's motions, as well as the related filings.

As a threshold matter, I find that it is impossible to know if medicines prescribed by NDOC work or what, if any, side effects are caused by the medication (versus some other cause of any given ailment) because Reberger refuses to take the medication as prescribed.¹² Reberger's refusal to take the medication as prescribed calls into question his allegations that the medication has turned his skin yellow. *See* ECF Nos. 62 at 1; 64 at 2; 65 at 2; 66 at 2. A recent blood draw shows that the bilirubin level in his blood has actually gone down. *See* 71-2 at 2 (comparing March 2022 to October 2021). That blood draw also belies Reberger's allegations that he is not receiving blood draws.¹³ The records provided by Defendants show he has received

¹¹ Plaintiff is reminded that Local Rule 7-2(d) provides that the "failure of an opposing party to file points and authorities in response to any motion...constitutes a consent to the granting of the motion." While this Court could find Plaintiff consented to this motion, it declines to do so at this time.

¹² *See also* ECF No. 71-1 [sealed] (forms refusing health care treatment and requesting other medications or blood draws); ECF No. 71-2 [sealed] (same); ECF No. 81-1 [sealed] at 3, ¶¶ 8-10 (affidavit discussing refusal to take prescribed medications); ECF No. 81-2 [sealed] (chart showing refusal to take medication); ECF No. 81-3 [sealed] (forms refusing health care treatment and requesting other medications or blood draws).

¹³ *See generally* ECF Nos. 62 at 2; 64 at 4; 65 at 2.

1 at least 6 blood draws and tests since March of 2020. *See* ECF No. 71-3. Reberger is not a doctor
2 or medical professional. Therefore, Reberger needs to allow the medical professionals to carry
3 out their obligations. That includes conducting testing and the administration of medicine.

4 Reberger must be mindful of when it is appropriate to file “emergency motions.” Local
5 Rule 7-4 addresses how and when emergency motions can be filed. LR 7-4. That rule sets forth
6 the procedure for resolving emergency disputes, and further notes that emergency motions
7 should be rare and that it is up to the Court to determine if any motion is, in fact, an emergency.
8 LR 7-4(a), (b), and (c). Based on the information before the Court, Reberger’s refusal to take
9 medication he requests to address his medical concerns is not an emergency; rather it is a
10 conflict created solely by Reberger and his refusal to follow medical advice and to take the
11 prescribed medication. Reberger’s refusal is also obstructing NDOC from carrying out the
12 instructions set forth in Judge Dorsey’s March 25, 2022, Order (ECF No. 63), which I adopt in
13 full.

14 Given the issues identified within the Reberger’s filings, I grant Defendants’ request that
15 this Court issue a standing order that it need only respond to a motion filed by the Plaintiff
16 when so ordered by the Court.¹⁴ This order only applies to non-dispositive motions. I also advise
17 Reberger that filing repetitive motions seeking relief for medical concerns, while refusing to take
18 the medications prescribed to address those same medical concerns, may render future motions
19 denied. In the alternative, I may consider striking duplicative or repetitive motions. Accordingly,
20 Defendants’ motion for sanctions is GRANTED in accordance with this Order. The Court will
21 issue a minute order advising when Defendants need to respond to any future motions.

22 Conclusion

23 IT IS HEREBY ORDERED that Plaintiff’s emergency motion for NDOC/HDSP to provide
24 HIV med invirase 1000mg with norvir 100mg as new NIV med reyataz has failed and needs to be
25 replaced (ECF No. 62) is DENIED.

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27 ¹⁴ District courts have inherent power to control their dockets and may impose sanctions....in the exercise
28 of that discretion. *Hamilton Copper & Steel Corp. v. Primary Steel, Inc.*, 898 F.2d 1428, 1429 (9th Cir.1990)
(citations omitted).

1 IT IS HEREBY FURTHER ORDERED that Plaintiff's amended emergency objection to
2 the Report and Recommendation (ECF No. 64) is **OVERRULED**.

3 IT IS FURTHER ORDERED that Plaintiff's emergency motion for NDOC to provide HIV
4 medicines and blood draws (ECF No. 65) is **DENIED**.

5 IT IS FURTHER ORDERED that Plaintiff's emergency motion for NDOC to provide HIV
6 meds (specified) and to see HIV specialist (ECF No. 66) is **DENIED**.

7 IT IS FURTHER ORDERED that Defendants motion for leave to file exhibits under seal
8 (ECF No. 70) is **GRANTED** as set forth in this Order.

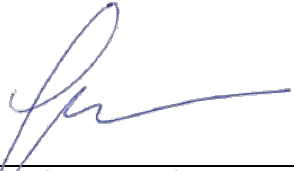
9 IT IS FURTHER ORDERED that Defendants motion for sanctions (ECF No. 74) is
10 **GRANTED**. Defendants need only respond to a motion filed by the Plaintiff when so ordered to
11 do so by the Court. This order only applies to non-dispositive motions.

12 IT IS FURTHER ORDERED that Plaintiff's emergency motion for NDOC to provide HIV
13 medication invirase 1000 MG alternatively reyataz/Opposition to status report (ECF No. 84) is
14 **DENIED**.

15 IT IS FURTHER ORDERED that Plaintiff's emergency motion for NDOC to provide
16 HIV medications invirase 1000MG with norvir 100 MG for effective HIV treatment alternatively
17 reyataz (ECF No. 85) is **DENIED**.

18 IT IS SO ORDERED.

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20 DATED this 16th day of May, 2022.

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23 _____
24 CRISTINA D. SILVA
25 UNITED STATES DISTRICT JUDGE
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